

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Real Estate Salesperson License Application of Nicole Angela Hickle	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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This matter came on for a prehearing conference before Administrative Law Judge Richard C. Luis on May 16, 2006, at the Office of Administrative Hearings in Minneapolis.

Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota, 55101-2130, appeared on behalf of the Minnesota Department of Commerce (Department). There was no appearance by or on behalf of Nicole Angela Hickle (Respondent), 1426 Morgan Avenue N., Minneapolis, MN 55411. The OAH record closed on May 16, 2006.

STATEMENT OF ISSUE

Whether Respondent engaged in fraudulent, deceptive, and dishonest acts that demonstrate she is untrustworthy, financially irresponsible, or otherwise incompetent and unqualified to act under the real estate salesperson license granted by the Commissioner under Minn. Stat. §§45.027, subd. 7(a)(4) and 82.35, subd. 1(b).¹

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On March 2, 2006, attorney Anthony D. Spector requested a hearing regarding Ms. Hickle's application for a real estate salesperson license.

¹ Unless otherwise specified, all references to Minnesota Statutes are to the 2004 edition, and all references to Minnesota Rules are to the 2005 edition.

2. On April 14, 2006, a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges (Notice of Hearing) in this matter was mailed to Nicole Angela Hickle, 1426 Morgan Avenue North, Minneapolis, MN 55411 and her then attorney of record, Anthony D. Spector, 510 First Avenue North, Suite 212, Minneapolis, MN 55402.² The Notice of Hearing indicated that a Prehearing Conference would be held in this matter on May 16, 2006.³

3. The Notice of Hearing in this matter includes the following statement:

Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.⁴

4. On May 15, 2006, Mr. Spector notified the undersigned Administrative Law Judge by telephone and letter that he was no longer representing Ms. Hickle and would not be attending the May 16, 2006 Prehearing Conference.⁵ Mr. Spector stated that Ms. Hickle would be proceeding *pro se*. Mr. Spector stated that he had reminded Ms. Hickle that if she did not appear at the Prehearing Conference she would be in default.

5. No one appeared at the May 16, 2006, prehearing conference on behalf of Respondent. No prehearing request was made for a continuance, nor did anyone file a Notice of Appearance on behalf of Ms. Hickle.

6. The Notice of Hearing alleges that Ms. Hickle submitted an application for licensure as a real estate salesperson on January 6, 2006, in which she disclosed that she had been charged on September 2, 2005 with Felony Theft by Swindle in Hennepin County, Minnesota. The criminal charge relates to the submission of fraudulent expense reimbursement requests to Ms. Hickle's employer that resulted in at least five fraudulent checks payable to a friend of Ms. Hickle. The Notice of Hearing further alleges that on November 22, 2005, Ms Hickle entered the Operation De Novo Adult Diversion Program, and if Respondent complies with all requirements of the Diversion Program the Felony Theft by Swindle Charge will be dismissed on November 21, 2006. The Notice also alleges that the pending felony charge demonstrates that Respondent engaged in fraudulent, deceptive, and dishonest acts that demonstrate she is untrustworthy, financially irresponsible, or otherwise incompetent and unqualified to act under the real estate salesperson license pursuant to Minn. Stat. §§45.027, subd. 7(a)(4) and 82.35, subd. 1(b).

² See Affidavit of Service by First Class Mail of Susan M. Oesterreich dated April 14, 2006.

³ Notice of Hearing, p. 1.

⁴ Notice of Hearing, p. 4, ¶ 1.

⁵ Letter from Anthony Spector dated May 15, 2006.

7. The allegations contained in the Notice of Hearing are deemed proved and are incorporated into these Findings by reference.

8. The issuance of a license to Ms. Hickle would not be in the public interest.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§14.50, 45.027, subds. 6 and 7, and 326.91.

2. Nicole Angela Hickle was given timely and proper notice of the Prehearing Conference in this matter. The Department has complied with all procedural requirements of law and rule.

3. Under Minn. Rule 1400.6000, Ms. Hickle is in default as a result of her failure to appear at the scheduled Prehearing Conference.

4. Under Minn. Rule 1400.6000, the allegations and issues set out in the Notice may be taken as true or deemed proved when a party defaults.

5. Based on the facts set out in the Notice of Hearing, the pending felony charge against Ms. Hickle shows she has engaged in fraudulent, deceptive, and dishonest acts that demonstrate she is untrustworthy, financially irresponsible, or otherwise incompetent and unqualified to act under the real estate salesperson license pursuant to Minn. Stat. §§ 45.027, subd. 7(a)(4) and 82.35, subd. 1(b).

6. Denial of a real estate salesperson license to Ms. Hickle is in the public interest within the meaning of Minn. Stat. § 45.027, subd. 7(a)(1).

Based on these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that Nicole Angela Hickle's application for a real estate salesperson license be DENIED.

Dated: June 2, 2006

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Taped, One tape
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Department of Commerce, 85 East Seventh Place, Suite 500, St. Paul, MN 55101, or call the Department at (651)296-6025, to learn about the procedure for filing exceptions or presenting argument.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law. If the Department fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Department, or upon the expiration of the deadline for doing so. The Department must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

